

**Supplemental Letter of Findings: 01-20150026
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Husband and Wife were domiciled in Indiana for the tax year 2011. Therefore, Husband and Wife were required to file an Individual Income Tax Return.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

Taxpayers protest the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers ("Husband" and "Wife") owned property and lived in Indiana starting in 2002. Taxpayers moved to Florida in 2006. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2011 because Taxpayers took the homestead deduction on their Indiana residence and federal tax documents stated an Indiana address. The Department determined that Taxpayers failed to file their 2011 Indiana income tax return. The Department therefore, issued a proposed assessment for 2011 income tax, penalty, and interest.

Taxpayers protested the proposed assessment of additional adjusted gross income tax. An administrative hearing was held. The Department issued a Letter of Findings 01-20150026 (August 18, 2015), denying Taxpayers' protest on the issue of domicile. Taxpayers requested a rehearing. The Department granted the rehearing. A rehearing was held, and this Supplemental Letter of Findings results. Additional facts will be provided as needed.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed Taxpayers income tax for the 2011 tax year on the ground that Taxpayers were Indiana residents and that they failed to file their 2011 Indiana income tax return. Taxpayers contend that they were not required to file their 2011 Indiana income tax return because they were not Indiana residents. The issue is whether, for the tax year 2011, Taxpayers were Indiana residents and therefore were subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, taxpayers are required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

To further emphasize the importance of domicile and the intent to abandon a domicile the Department refers to *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. The court determined that a person must have intention to abandon domicile in order to establish a new domicile. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1317-18 (Ind. 1988). (Internal citations omitted) (**Emphasis added**).

During the initial protest process, Taxpayers submitted additional documentation to support the assertion that they were not Indiana residents and did not owe any Indiana income tax for the tax year 2011. The documents included tax documents for 2011 with their Florida address or Florida income, Florida vehicle registration, and Husband's employment contract with his Florida employer.

During the rehearing, Taxpayers provided even more documentation. They provided Husband's Florida employment letter, Husband's rental agreement for an office space in Florida, a contract to show that Taxpayers attempted to build a house in Florida but employment fell through so they had to move to a second location in Florida, Taxpayer's children's report card in Florida - this showed limited number of days absent - and a mover's receipt from when they moved from Indiana to Florida 2006. Taxpayers stated they attempted to sell their Indiana home when they moved, but were unsuccessful due to the declining housing market.

Taxpayers' documents do demonstrate that Taxpayers lived in Florida for some of the time. A taxpayer can have more than one residence but only one domicile. Taxpayers' documents are not enough to rebut the Department's original position that Taxpayers were domiciled in Indiana in 2011. Taxpayers had the homestead deduction on their Indiana property indicating that it was their primary residence. Taxpayers returned to Indiana at the end of 2011, thus showing they never truly abandoned their Indiana domicile. Taxpayers did not provide any evidence that they tried to sell their Indiana home. Taxpayers stated that the reason they moved back to Indiana was for economic reasons: they owned a house already and Husband was able to obtain local employment.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317-18. Taxpayers failed to do so. Therefore, Taxpayers have not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayers' protest is respectfully denied.

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